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*Ultimate Fighting Championship and UFC*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

Cung Le, Nathan Quarry, Jon Fitch, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC,

Defendant.

Case No. 5:14-cv-05484 EJD

**DEFENDANT ZUFFA, LLC'S REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT OF  
ZUFFA, LLC'S CONSOLIDATED  
MOTION TO DISMISS PLAINTIFFS'  
COMPLAINTS PURSUANT TO FED. R.  
CIV. P. 12(b)(6)**

Date: July 23, 2015  
Time: 9:00 a.m.  
Place: Courtroom 4  
Judge: Hon. Edward J. Davila

1 Luis Javier Vazquez and Dennis Lloyd  
2 Hallman, on behalf of themselves and all  
3 others similarly situated,

4 Plaintiffs,

5 v.

6 Zuffa, LLC, d/b/a Ultimate Fighting  
7 Championship and UFC,

8 Defendant.

Case No. 5:14-cv-05591 EJD

9 Brandon Vera and Pablo Garza, on behalf of  
10 themselves and all others similarly situated,

11 Plaintiffs,

12 v.

13 Zuffa, LLC, d/b/a Ultimate Fighting  
14 Championship and UFC,

15 Defendant.

Case No. 5:14-cv-05621 EJD

16 Gabe Ruediger and Mac Danzig, on behalf of  
17 themselves and all others similarly situated,

18 Plaintiffs,

19 v.

20 Zuffa, LLC, d/b/a Ultimate Fighting  
21 Championship and UFC,

22 Defendant.

Case No. 5:15-cv-00521 EJD

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**Please Take Notice That,** Defendant Zuffa, LLC (“Zuffa”) hereby requests that the Court take judicial notice pursuant to Rule 201(b) of the Federal Rules of Evidence of the attached documents and facts identified below and in Attachment A and attached as exhibits to the Declaration of Suzanne E. Jaffe in Support of Zuffa, LLC’s Request for Judicial Notice.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. Statement of Issue to Be Decided**

Whether the documents and facts listed in Attachment A may be judicially noticed pursuant to Federal Rule of Evidence 201(b) in ruling upon Zuffa’s motion to dismiss?

**II. Legal Standard**

It is well established that Federal Rule of Evidence 201 allows the court to take judicial notice of a fact that is “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” A court “may take judicial notice on its own” or “must take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(c). In ruling on a motion to dismiss, “courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *Skilstaf, Inc. v. CVS Caremark Corp.*, No. C 09-02514 SI, 2010 WL 199717 (N.D. Cal. Jan. 13, 2010) (same). Courts can take judicial notice, for example, of “records and reports of administrative bodies.” *United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008). Taking judicial notice of facts and documents outside of a complaint does not turn a motion to dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“A court may, however, consider certain materials — documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice — without converting the motion to

dismiss into a motion for summary judgment”).

### III. Argument

The documents identified in Attachment A are proper subjects of judicial notice. Each of these documents is a matter of public record and maintained by government agencies. “[P]ublic records and government documents are generally considered not to be subject to reasonable dispute” and thus are proper subjects of judicial notice. *L’Garde, Inc. v. Raytheon Space and Airborne Sys.*, 805 F. Supp. 2d 932, 938-39 (C.D. Cal. 2011) (citing *Hansen Bev. Co. v. Innovation Ventures, LLC*, No. 08-CV-1166-IEG, 2009 WL 6597891, at \*1 (S.D. Cal. Dec. 23, 2009)); *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (“we may take judicial notice of the records of state agencies and other undisputed matters of public record”). This includes “judicial notice of information posted on government websites.” *Ctr. For Biological Diversity v. Export-Import Bank of the United States*, No. C 12-6325 SBA, 2014 WL 3963203, \*4 n.6 (N.D. Cal. Aug. 12, 2014) (citation and quotations omitted); *see also Jarvis v. JP Morgan Chase Bank, N.A.*, No. CV 10-4184-GHK (FMOx), 2010 WL 2927276, at \*1 (C.D. Cal. Jul. 23, 2010) (listing cases).

Exhibits A-H, listed in Attachment A, are records and public forms from the state agencies of California, Florida, Missouri, Nevada and New Jersey that regulate professional martial mixed arts (“MMA”) events.<sup>1</sup> Each of these exhibits contains the official results of specific MMA bouts that were held within those respective states. The California State Athletic Commission,<sup>2</sup> the Florida Boxing Commission,<sup>3</sup> the Missouri Office of Athletics,<sup>4</sup> and the

<sup>1</sup> The Nevada State Athletic Commission is a state entity within the Nevada Department of Business and Industry. Nev. Rev. Stat. § 467.020 (2014). The California State Athletic Commission is a state entity within the California Department of Consumer Affairs. Cal. Bus & Prof. Code § 18602(a) (2014). The Missouri Office of Athletics is a state entity within the Missouri Division of Professional Registration. Mo. Rev. Stat. § 317.001 (2014). The New Jersey State Athletic Control Board is a state entity within the New Jersey Department of Law and Public Safety, which is headed by the Attorney General of New Jersey. N.J. Rev. Stat. §§ 5:2A-3; 45:14A-7. The Florida State Boxing Commission is a state entity within the Florida Department of Business and Professional Regulation. Fla. Stat. § 548.003.

<sup>2</sup> Cal. Dep’t of Consumer Affairs, Cal. State Ath. Comm’n, 2013 Event Results,” *available at* <http://www.dca.ca.gov/csac/events/results/2013.shtml> (last accessed Feb. 23, 2015).

1 Nevada State Athletic Commission<sup>5</sup> make these official records available to the public on their  
 2 respective state government websites. The New Jersey Office of the Attorney General makes  
 3 publicly available official results for MMA events sanctioned by the New Jersey State Athletic  
 4 Control Board through requests under the state's Open Public Records Act, which may be  
 5 submitted online.<sup>6</sup>

6 Zuffa requests judicial notice that the bouts identified in these records took place and  
 7 included the participants listed. Other courts have taken judicial notice of identical records of a  
 8 state athletic commission to establish the fact of a bout and its participants. *See J&J Sports*  
 9 *Prods., Inc., v. Medinarios*, No. C 08-0998 JF (RS), 2008 WL 4412240, at \*1 n.4 (N.D. Cal. Sept.  
 10 25, 2008) (taking judicial notice of Nevada State Athletic Commission records of bout);  
 11 *Kingvision Pay-Per-View, Ltd. v. Guzman*, No. CV-07-0963-PHX-PGR, 2008 WL 1924988, at  
 12 \*2 (D. Ariz. Apr. 30, 2008) ("the Court will take judicial notice of the public records of the  
 13 Nevada Athletic Commission for May 14, 2005 that establish that the Judah-Rivera fight was part  
 14 of the Trinidad-Wright program"). These facts are not subject to reasonable dispute because they  
 15 are capable of ready and accurate determination by sources whose accuracy cannot be reasonably  
 16 questioned.

17 Exhibit I is the 2014 Annual 10-K report filed by Viacom, Inc. with the Securities and  
 18 Exchange Commission ("SEC") on November 13, 2014 and maintained on the SEC's website.  
 19 As with the general rule that "courts may take judicial notice of public documents . . . [t]his  
 20 general principle has been applied to permit courts to judicially notice SEC filings." *In re Toyota*  
 21 *Motor Corp.*, 785 F. Supp. 2d 883, 902-03 (C.D. Cal. Apr. 8, 2011) (internal quotation omitted);

23 <sup>3</sup> Fla. Dep't of Bus & Prof. Regulation, Florida State Boxing Commission, "Event Results,"  
 24 available at <http://www.myfloridalicense.com/dbpr/pro/sbc/event-results.html> (last accessed Feb.  
 25 23, 2015).

26 <sup>4</sup> Mo. Div. of Prof. Registration, Office of Athletics, "Missouri MMA Show Results," available  
 27 at <http://pr.mo.gov/athletics-mmareults.asp> (last accessed Feb. 23, 2015).

28 <sup>5</sup> Nev. Dep't of Bus. & Indus., Nev. State Ath. Comm'n, "Results," available at  
<http://boxing.nv.gov/results/Results/> (last accessed Feb. 23, 2015).

<sup>6</sup> State of New Jersey, Government Records Request Form, available at  
[https://www16.state.nj.us/NJ\\_OPRA/departmen.jsp](https://www16.state.nj.us/NJ_OPRA/departmen.jsp) (last accessed Feb. 23, 2015).

1 *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008); *Barnes*  
 2 *& Noble, Inc. v. LSI Corp.*, 849 F. Supp. 2d 925, 930-31 (N.D. Cal. 2012). Zuffa requests judicial  
 3 notice of Viacom's 10-K filing showing that (1) Bellator Sport Worldwide LLC, a Delaware  
 4 corporation, is a subsidiary of Viacom, Ex. 21.1 at 1; (2) that Viacom is a global entertainment  
 5 content company that operates media networks including MTV®, VH1®, CMT®, BET®,  
 6 Nickelodeon®, Comedy Central®, SPIKE®, *id.* at 1; and (3) that Viacom has aired Bellator  
 7 MMA on its SPIKE® TV network, *id.* at 7-8. These facts are not subject to reasonable dispute  
 8 because they are capable of ready and accurate determination by sources whose accuracy cannot  
 9 be reasonably questioned.

10 Exhibit J is a letter written by the Federal Trade Commission to Zuffa's counsel available  
 11 publicly on its website. As discussed above, documents available on government websites are  
 12 proper subjects of judicial notice. *Jarvis*, 2010 WL 2927276 at \*1. Courts have taken judicial  
 13 notice of FTC letters in the past. *E.g., Romaine v. Diversified Collection Servs., Inc.*, 155 F.3d  
 14 1142, 1146 (9th Cir. 1998). Zuffa requests judicial notice that the FTC reviewed Zuffa's  
 15 acquisition of Strikeforce and closed the investigation without further action. These facts are not  
 16 subject to reasonable dispute because they are capable of ready and accurate determination by  
 17 sources whose accuracy cannot be reasonably questioned.

#### 18 **IV. Conclusion**

19 For the foregoing reasons, Zuffa respectfully requests that Exhibits A-J be judicially  
 20 noticed when ruling on Zuffa's motion to dismiss.

21 Dated: February 27, 2015

Respectfully Submitted,

22 BOIES, SCHILLER & FLEXNER LLP

23  
 24 By: /s/ William A. Isaacson

25 William A. Isaacson

26 Attorneys for Defendant Zuffa, LLC, d/b/a  
 27 Ultimate Fighting Championship and UFC  
 28

**ATTACHMENT A: DOCUMENTS & FACTS SUBJECT TO THIS REQUEST**

**Exhibit A:** Florida State Boxing Commission, Match Results, July 5, 2014 event for “WSOF” at Convention Center — Daytona (showing bout between Jon Fitch and Dennis Hallman on line 7);

**Exhibit B:** Nevada State Athletic Commission, Mixed Martial Arts Show Results, June 14, 2013 event for WSOFF, LLC at Hard Rock Hotel & Casino, Las Vegas (showing bout between Jonathan Parker Fitch and Joshua Ray Burkman);

**Exhibit C:** Florida State Boxing Commission, Match Results, Oct. 26, 2013 event for World Series of Fighting at Bank United Center — Coral Gables, FL (showing bout between Marcelo Alfaya and Jon Fitch on line 9);

**Exhibit D:** California State Athletic Commission, Mixed Martial Arts Bout Results, Dec. 13, 2014 event for promoter “WSOF” at McClellan Civic Center, Sacramento, CA (showing Rousimar Palhares and Jon Fitch in Bout 11);

**Exhibit E:** Missouri Office of Athletics, Mixed Martial Arts Bout Results, Aug. 30, 2013 event for promoter “Titan Fighting Champ” at Union Station in Kansas City, MO (showing Dennis Hallman and Dan Hornbuckle in Bout 6);

**Exhibit F:** California State Athletic Commission, Mixed Martial Arts Bout Results, May 31, 2013 event for promoter “BAMMA” at Commerce Casino, Commerce, CA (showing Gabriel Ruediger and Scott Catlin in Bout 7);

**Exhibit G:** Nevada State Athletic Commission, Mixed Martial Arts Show Results, Jan. 17, 2015 event for “MMAWS, LLC dba WSOFF” at Planet Hollywood Resort, Las Vegas (showing bout between Jake Sequoyah Shields and Brian E.L. Foster);

**Exhibit H:** New Jersey State Athletic Control Board, Scoring Detail, Nov. 15, 2011 event for Bellator Sport Worldwide LLC at Revel, Atlantic City (showing bout between Jose Beltran and Quinton Jackson);

**Exhibit I:** Viacom Inc., Form 10-K Annual Report, filed Nov. 13, 2014 for period ending Sept. 30, 2014 (showing that Bellator Sport Worldwide LLC is a subsidiary of Viacom (at Ex. 21.1 at 1); that Viacom is a global entertainment company that operates Media Networks including MTV®, VH1®, CMT®, BET®, Nickelodeon®, Comedy Central®, SPIKE® (at pg. 1); and that Viacom has aired Bellator MMA on its SPIKE® TV network (at pg. 7-8)).

**Exhibit J:** Federal Trade Commission, Closing Letter to Counsel for Zuffa LLC, Jan. 25, 2012, re: Acquisition of Explosion Entertainment, LLC (Strikeforce) by Zuffa, LLC (UFC) FTC File No. 111 0136 (showing that the FTC closed its investigation into the acquisition of Strikeforce without further action).